

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIVA AVIKAIDA ISRAEL,

Plaintiff,

v.

SHMARYAHU BROWNSTEIN, et al.,

Defendants.

No. 2:21-cv-00262-TLN-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The action proceeds on plaintiff's second amended complaint, alleging that defendants have violated her constitutional rights to free exercise of religion and equal protection and the Religious Land Use and Institutionalized Persons Act. ECF Nos. 26, 28. The court is currently faced with various requests filed by plaintiff to grant her more time to respond to defendants' discovery requests and with defendants' requests to modify the schedule and compel plaintiff to respond to discovery. ECF Nos. 61-66, 68.

On December 5, 2022, plaintiff filed a motion to modify the schedule by extending the discovery deadline by 45 days and to give plaintiff an additional seven days to respond to a set of document requests and a set of interrogatories that defendants had served on plaintiff. ECF No. 61.

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1 Defendants filed their own motion to modify the schedule on January 6, 2023, noting that  
2 they had no opposition to the granting of plaintiff's requests to extend discovery deadlines. ECF  
3 No. 63. Defendants ask the court to allow them to file a motion to compel (the deadline under the  
4 current schedule passed on December 9, 2022 (ECF No. 50)) and concurrently filed that motion,  
5 seeking to compel responses to their document requests and interrogatories. ECF Nos 63, 64.

6 Plaintiff then filed a motion requesting an additional two months to respond to the  
7 discovery requests, stating that she had attempted suicide on December 6, 2022. ECF No. 65.  
8 Another motion from plaintiff followed a week later, in which plaintiff stated that she had  
9 "suffered a medically disabling episode of serious mental illness" on December 6, 2022 and "a  
10 disruption to all vital brain functions as a result of epilepsy" on January 12, 2023. ECF No. 66.  
11 Plaintiff states that she will be prejudiced if she is forced to respond to the pending discovery  
12 requests before her "neurological and neurophysical distress is resolved." *Id.* Plaintiff states that  
13 she is currently experiencing memory loss, black-outs, trauma, dissociation reactions, metabolic  
14 disorders, and cognitive impairment. *Id.* She needs "at least two to three months" to respond to  
15 the discovery requests." *Id.*

16 Defendants oppose the granting of any indefinite extension of time for plaintiff to serve  
17 her discovery responses. ECF No. 68. Defendants are not opposed, however, to a definite  
18 extension of time in light of plaintiff's health struggles. *Id.* Defendants argue that, as plaintiff  
19 has conceded her failure to timely respond to their discovery requests, the court should grant their  
20 motion to compel her responses. *Id.*

21 Federal Rule of Civil Procedure 37 authorizes a court to compel a party who has failed to  
22 respond to discovery requests to do so. The court's decision to grant or deny such a motion is  
23 reviewed for abuse of discretion. *Self Directed Placement Corp v. Control Data Corp.*, 908 F.2d  
24 462, 463 (9th Cir. 1990). Here, there is no dispute that plaintiff has not timely responded to  
25 defendants' discovery requests, but there is also no dispute that plaintiff has suffered recent health  
26 emergencies that have impacted her ability to respond. Accordingly, the court will grant the  
27 requests by both parties to modify the schedule to allow additional time for discovery. In light of  
28 plaintiff's health situation, the court will deny the motion to compel at this time, but will provide

1 a definite deadline for plaintiff to serve her responses. If plaintiff again fails to file timely  
2 responses, defendants may renew their request to compel responses.

3 Accordingly, it is hereby ORDERED that:

4 1. The motions to modify the schedule filed by plaintiff on December 5, 2022 (ECF No.  
5 61), December 9, 2022 (ECF No. 62), January 17, 2023 (ECF No. 65), and January 23,  
6 2023 (ECF No. 66) and by defendants on January 6, 2023 (ECF No. 63) are  
7 GRANTED, and the schedule is modified as follows:

8 a. Plaintiff shall serve her responses to defendants' October 7, 2022 requests for  
9 production of documents and interrogatories on or before May 6, 2023.


10 b. The parties may conduct additional discovery until July 5, 2023. Any motions  
11 to compel shall be filed by that date. All requests for discovery pursuant to  
12 Fed. R. Civ. P. 31, 33, 34, or 36 shall be served not later than May 6, 2023.

13 c. Dispositive motions shall be filed on or before September 4, 2023.

14 2. Defendants' January 6, 2023 motion to compel (ECF No. 64) is DENIED without  
15 prejudice to its renewal should plaintiff fail to comply with this order.

16 3. Failure to comply with this order may result in dismissal of this action.

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18 Dated: March 10, 2023.

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20 EDMUND F. BRENNAN  
21 UNITED STATES MAGISTRATE JUDGE  
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